

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GIRAFA.COM, INC.)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 07-787-SLR
)	
AMAZON WEB SERVICES LLC,)	JURY TRIAL DEMANDED
AMAZON.COM, INC., ALEXA INTERNET,)	
INC., IAC SEARCH & MEDIA, INC.,)	
SNAP TECHNOLOGIES, INC., YAHOO! INC.,)	
SMARTDEVIL INC., EXALEAD, INC., and)	
EXALEAD S.A.,)	
)	
Defendants.)	

**AMAZON WEB SERVICES LLC, AMAZON.COM, INC., AND ALEXA INTERNET
INC.'S REPLY SUPPORTING THEIR MOTION FOR LEAVE TO FILE A SURREPLY
IN RESPONSE TO GIRAFA.COM, INC.'S REPLY BRIEF IN SUPPORT OF ITS
MOTION FOR PRELIMINARY INJUNCTION**

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Dated: August 11, 2008
877983/ 32639

The Amazon Defendants raised only three targeted points in their Surreply:

1. Girafa's Reply reads a new limitation into the claims—that the hyperlink associated with a thumbnail visual image of a home page cannot be a hyperlink to the homepage represented by the thumbnail visual image. In its Opposition to the Amazon Defendants' Motion for Leave to File a Surreply ("Opposition"), D.I. 132, Girafa claims that it made this argument in its opening papers, but never identifies where, because it did not.
2. The invalidating Schmid prior art reference was, in fact, published before Girafa's filing date and was proper evidence of invalidity, when the correct rules are applied. In its Reply, Girafa cited an old, now incorrect version of the MPEP to challenge Schmid. The Amazon Defendants' Surreply corrected Girafa's error, citing the latest version of the MPEP and showing that Schmid meets the standard. Girafa's Opposition again argues for the old, now incorrect version of the MPEP. Regardless, a defendant may prevail against a preliminary injunction motion just by raising a substantial question as to the validity of the asserted patent claims. *Erico Int'l Corp. v. Vutec Corp.*, 516 F.3d 1350, 1355-56 (Fed. Cir. 2008). The Schmid reference does far more than that.
3. On Reply, both Girafa and its expert Dr. Myers, changed their positions on the definition of "separate" servers, moving from requiring only *logical* separation in their opening papers to requiring actual *physical* separation. In its Opposition Girafa claims that it did not change its position, but the record speaks for itself.

None of the Amazon Defendants' arguments was made in an effort to get the last word, but rather, each argument refutes new evidence or position reversals improperly made in Girafa's Reply, which is the exact circumstance where a surreply is allowed. *In re ML-Lee Acquisition Fund II, L.P. Sec. Litig.*, 848 F. Supp. 527, 566 at n. 28 (D. Del. 1994) (granting leave to file a surreply because of new arguments and evidence used in the reply brief).

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CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on August 11, 2008, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I further certify that on August 11, 2008, the attached document was Electronically Mailed to the following person(s):

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